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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,078	06/19/2007	Michael-Rainer Busch	095309.58177US	8811
23911 7590 11/10/2008 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300				
EXAMINER				
NGHIEM, MICHAEL P				
ART UNIT		PAPER NUMBER		
2863				
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11/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/594,078

**Applicant(s)**

BUSCH ET AL.

**Examiner**

MICHAEL P. NGHIEM

**Art Unit**

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 October 2008 and 19 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19, 22, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 22 is/are allowed.
- 6) ☒ Claim(s) 31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The Amendment filed on September 19, 2008 has been considered.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 17, 2008 has been entered.

#### ***Withdrawal of Allowability***

The indicated allowability of claims 31 and 32 is withdrawn in view of the newly discovered reference(s) to Hugel et al. (DE 44 26 494). Rejections based on the newly cited reference(s) follow.

***Specification***

The substitute specification filed on September 25, 2006 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: a statement that the substitute specification contains no new matter is missing.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 31 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: there is no relationship between the memory device, the data memory, and the counter.

Claim 31, it is unclear how the values/data stored in the memory device and the data memory can be used for evaluating data for detecting the presence or absence of the prescribed heat exchanger.

The remaining claims are also rejected under 35 U.S.C. 112, second paragraph, for being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unger et al. (US 6,695,473) in view of Hugel et al. (DE 44 26 494).

Regarding claim 31, Unger et al. discloses an apparatus (Fig. 1) for detecting the presence of a motor vehicle prescribed heat exchanger (radiator 16, column 4, lines 34-36), comprising:

the motor vehicle prescribed heat exchanger (16) having a heat-exchanger medium (coolant, column 4, line 42) for a motor vehicle motor (Abstract, lines 1-2);

a measuring system (coolant temperature sensor 53, column 4, lines 52-53) for measuring the temperature of the heat-exchanger medium (column 4, lines 40-53); and

an evaluation device (ECU 42) for evaluating data for detecting the presence of the prescribed heat exchanger (column 4, lines 34-36) wherein the evaluation device comprises:

a memory device (memory, column 4, line 38), values of time profiles of measured values (Fig. 4);

predefined threshold values and operating state data (Fig. 4).

Regarding claim 31, Unger et al. discloses the evaluation device (ECU 42) is a constituent part of a motor vehicle on-board computer (Abstract, lines 1-2; Fig. 1; column 3, lines 12-27).

However, Unger et al. does not disclose, regarding claim 31:

- memory device for storing values of time profiles of measured values.
- a data memory for storing data including predefined threshold values and operating state data.
- at least one counter.

Nevertheless, Hugel et al. discloses storing values of time profiles of measured values (temperature variation of time, Abstract, lines 3-4); data including predefined threshold

values and operating state data (suggested by operating characteristics of engine related performance, Abstract, lines 2-3).

Furthermore, it would be obvious to provide the evaluation device (ECU 42) of Unger et al. with at least one counter, since it is common knowledge to provide a processor/controller with a counter/register for the purpose of computing or counting data.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the memory of Unger et al. with the function of storing time and operating related data as suggested by Hugel et al. for the purpose of evaluating engine operating characteristics.

#### ***Allowable Subject Matter***

Claims 19 and 22 are allowed.

#### ***Reasons For Allowance***

The **combination** as claimed wherein a method or system for detecting the presence or absence of a prescribed heat exchanger comprising comparing the plotted

current operationally relevant parameters with predefined values; determining an associated current operating state in accordance with this comparison (claim 19) or incrementing at least one counter in accordance with the comparison result; carrying out method steps until a predefined counter reading is reached (claim 22) is not disclosed, suggested, or made obvious by the prior art of record.

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Nghiem whose telephone number is (571) 272-2277. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael P. Nghiem/

Primary Examiner, GAU 2863

November 6, 2008